

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.210/00215/2017

Date of decision : November 13th, 2019.

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
R.N. Singh, Member (Judicial).**

Shri Mahendra Kumar Patel,
S/o Satairam Patel,
Age 33 years,
Ex-Gangman (Gatekeeper)
under SSE (P.Way), Pen,
ADEN (E) Panvel,
Sr. DEN (E) CSTM of Central
Railway, R/o RB I/A-10, Railway
Colony, At/Post-Pen, Distt.Raigad,
PIN-402 107 (MS).

.. Applicant.

(By Advocate Shri D. N. Karande).

Versus

1. Union of India,
through the Chairman,
Railway board, Ministry of
Railway, Railway Bhavan,
New Delhi-110 001.
2. General Manager,
Central Railway,
2nd Floor of General Manager's
Office, CST Mumbai-400 001.
3. Chief Personnel Officer,
Central Railway,
1st Floor of General Manager's
Office, CST Mumbai-400 001 (MS).
4. Cheif Medical Director,
3rd Floor of DRM's
Office Bldg.,
Central Railway,
Mumbai CST-400 001.
5. Divisional Railway Manager,
Central Railway,
Mumbai Division,
CST Mumbai-400 001.

6. Sr. Divisional Personnel Officer,
Mumbai Division,
Central Railway,
CST Mumbai 400 001.
7. Sr. Divisional Engineer (E),
Central Railway,
Mumbai Division,
CST Mumbai-400 001.
8. Assistant Divisional Engineer (E)
at Panvel of Mumbai Division,
Central Railway,
Panvel 410 206
(Distt. Raigad) (MS).

.. Respondents.

(By Advocate Shri V. S. Masurkar).

O R D E R (O R A L)
Per : R. N. Singh, Member (Judicial)

Present.

1. Shri D. N. Karande, learned counsel for the applicant.

2. Shri V. S. Masurkar, learned counsel for the respondents.

3. It is the admitted case of the applicant that he was declared medically unfit for all classes while working as Gangman under the respondents. In view of the same the applicant made a representation dated 20.01.2017 (Exhibit RJ-1) to the Divisional Railway Manager (P/Engg) wherein he requested that his wife Smt. Kavita M. Patel may be given job in Railways on his being declared medically unfit for all classes. He also informs therein his such representation that his wife is an Arts Graduate (BA) from Kanpur University and her date of birth is

10.07.1991. The said request of the applicant has been duly forwarded by the Senior ADEN (East) PNVL.

4. The learned counsel for the applicant submits that though the applicant's request for Voluntary Retirement has been accepted by the respondents. However, the respondents have not considered and passed necessary orders on his request for Compassionate Appointment in favour of his wife.

5. In the aforesaid background, the applicant has prayed for the following reliefs in the present OA:

"a). That this Hon'ble Tribunal may kindly be pleased to order the production of documents, files which are in possession of the respondents and which compelled to issue the impugned orders No. H.494/MB/Appeal/MKP/83-16 dt.04.08.2016 (A-1) and order No. KYN/H/M/MB dt.22/7/2016-declaring the applicant Unfit for all Classes' (A-4).

b) That this Hon'ble may kindly be pleased to direct the Chairman, Railway board to delete the para 512 (2) Sub Note (ii) from IRMM, as the said provision is contrary to the Section 47 of the PWD Act.1995 (A-17).

c) This Hon'ble Tribunal may direct the Respondents to re-examine the applicant in the light of amendment to the Chapter XII of the Indian Railway Establishment Manual (IREM) Vol.I, 1989 which has incorporated the scheme for absorption in alternative employment of medically de-categorized staff.

d) This Hon'ble Tribunal may kindly please to direct the CMD to declare the

applicant fit and reinstate him in the service with all consequential benefits arising from such reinstatement in service.

e) This Hon'ble Tribunal may direct the Respondents to treat the intervening period as duty for all purposes such salaries, pay fixation and its pay arrears.

f) This Hon'ble Tribunal may kindly direct the Respondents to pay interest @18% on such payment.

g) Any other relief, this Hon'ble Tribunal may deem fit to be granted to meet the ends of justice.

h) Cost of this O.A. may kindly be saddled on the respondents."

6. In response to the notice from this Tribunal, the respondents have filed reply and they have taken objection to the effect that against the experts advice of medical the applicant has sought relief in the present OA. The learned counsel for the respondents also invites our attention to the objections taken by the respondents that the OA is barred by limitation and the applicant has not filed any application seeking condonation of delay. The respondents in their reply have also stated that the applicant has requested vide his letter dated 20.01.2017 to grant him Voluntary Retirement from service and the same has been accepted by the respondents and the applicant has been communicated of such fact vide their letter dated 21.02.2017 (Annexure A-1) and the same is not under challenge.

7. The learned counsel for the respondents on the basis of the written reply filed by the respondents also argue that para-X (II) of the Master Circular No.16, related to Compassionate Ground Appointment clearly provides that, in case where a railway servant is declared unfit for all post in terms of para 512 (2) of the Medical Manual and is retired from railway service, compassionate appointment to the ward of such a railway servant would not be admissible. As the applicant had been declared unfit for all classes as per para 512 (2) of Medical Manual and has retired from service, his request for compassionate appointment to his wife cannot be accepted being against the Rule. The Respondents also rely upon the said provision of master circular no.16 when produced.

8. We have heard the learned counsels for the parties and have also perused the pleadings on record. In the present OA, the applicant impleaded Chairman, Railway board inspite of the fact that it is settled position of rule and law that the Railway can sue and can be sued through the respective General Manager and in case of Railway Board, the same can sue and can be sued through the Secretary, Railway Board. Opportunity has been given to the learned counsel for the applicant to amend the OA, if he so desires. However, inspite of the liberty

granted, he argues that only Chairman of the Railway board can be impleaded.

9. We have also found that the claim of the applicant for grant of Compassionate Appointment has neither been prayed nor any rule or law has been shown to us which requires us to adjudicate the issue in absence of the prayer/pleadings in this regard.

10. In view of the aforesaid we do not find any merit in the present OA. Accordingly, the same is dismissed. However, in the facts and circumstances, no order as to costs.

(R. N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

v.

JD
05/12/R